

§ 134.509

the Judge will not review the determinations made by the U.S. Department of Veteran's Affairs, U.S. Department of Defense, or such determinations identified by documents provided by the U.S. National Archives and Records Administration.

§ 134.509 When will a Judge dismiss an appeal?

(a) The Judge selected to preside over a protest appeal shall dismiss the appeal, if:

(1) The appeal does not, on its face, allege facts that if proven to be true, warrant reversal or modification of the determination;

(2) The appeal petition does not contain all of the information required in § 134.505;

(3) The appeal is untimely filed pursuant to § 134.503 or is not otherwise filed in accordance with the requirements of this subpart or the requirements in Subparts A and B of this part; or

(4) The matter has been decided or is the subject of an adjudication before a court of competent jurisdiction over such matters.

(b) Once Appellant files an appeal, subsequent initiation of litigation of the matter in a court of competent jurisdiction will not preclude the Judge from rendering a final decision on the matter.

§ 134.510 Who can file a response to an appeal petition and when must such a response be filed?

Although not required, any person served with an appeal petition may file and serve a response supporting or opposing the appeal if he or she wishes to do so. If a person decides to file a response, the response must be filed within 7 business days after service of the appeal petition. The response should present argument.

§ 134.511 Will the Judge permit discovery and oral hearings?

Discovery will not be permitted and oral hearings will not be held.

§ 134.512 What are the limitations on new evidence?

The Judge may not admit evidence beyond the written protest file nor per-

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mit any form of discovery. All appeals under this subpart will be decided solely on a review of the evidence in the written protest file, arguments made in the appeal petition and response(s) filed thereto.

§ 134.513 When is the record closed?

The record will close when the time to file a response to an appeal petition expires pursuant to 13 CFR 134.510.

§ 134.514 When must the Judge issue his or her decision?

The Judge shall issue a decision, insofar as practicable, within 15 business days after close of the record.

[70 FR 8927, Feb. 24, 2005, as amended at 76 FR 5685, Feb. 2, 2011]

§ 134.515 What are the effects of the Judge's decision?

(a) A decision of the Judge under this subpart is the final agency decision and is binding on the parties. For the effects of the decision on the contract or procurement at issue, please see 13 CFR 125.28.

(b) The Judge may reconsider an appeal decision within twenty (20) calendar days after issuance of the written decision. Any party who has appeared in the proceeding, or SBA, may request reconsideration by filing with the Judge and serving a petition for reconsideration on all the parties to the appeal within twenty (20) calendar days after issuance of the written decision. The request for reconsideration must clearly show an error of fact or law material to the decision. The Judge may also reconsider a decision on his or her own initiative.

(c) The Judge may remand a proceeding to the D/GC for a new SDVO SBC determination if the latter fails to address issues of decisional significance sufficiently, does not address all the relevant evidence, or does not identify specifically the evidence upon which it relied. Once remanded, OHA no longer has jurisdiction over the matter, unless a new appeal is filed as a result of the new SDVO SBC determination.

[70 FR 8927, Feb. 24, 2005, as amended at 73 FR 56955, Oct. 1, 2008; 75 FR 62292, Oct. 7, 2010; 76 FR 5685, Feb. 2, 2011]